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L33062162IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY**FILED**
VANESSA L. ARMSTRONG, CLERK

NOV 20 2019

U.S. DISTRICT COURT
WEST'N. DIST. KENTUCKY

Dean Edward Malone, pro se

) Plaintiff

Case No.

1:19 CV-170-GNS

v

Complaint for Refund

Department of the Treasury

of Taxes

Internal Revenue Service

Christine L Davis, Operation Manager IRS

Jury Trial Demanded

Carl W Dorn II, Director IRS

Danny Kincaid, Officer IRS

Jennifer Perez, Disclosure Specialist IRS

) Defendants

-
1. Comes now Dean Edward Malone, Plaintiff *pro se*, having filed the instant law suit against the defendants the United States of America represented by the Department of the Treasury and the Internal Revenue Service, its agency, hereafter referred to as the "IRS", on Plaintiff's claim for refund of amounts overpaid as taxes, as properly claimed by way of the 1040 Tax Returns that Plaintiff filed concerning 2014, 2016, 2017 and 2018 tax years. Because Defendant has failed or refused to properly process Plaintiff's 1040 returns for Tax Years 2014, 2016, 2017 and 2018 returns within the prescribed 90 days from filing, Plaintiff

has every reason to believe that the IRS will continue to delay processing of these returns, and has therefore filed the instant action against the Defendant.

2. Plaintiff is also filing suit against particular employees of the IRS for malfeasance and misfeasance in ignoring the laws as written with respect to providing disclosures under the Freedom of Information Act, in answering inquiries as directly made under the Taxpayer Bill of Rights and by defrauding Plaintiff of his property by knowingly and deliberately misapplying the Internal Revenue Code with malice of intent as evidenced by their written correspondence and actions.

I. Jurisdiction and Venue

3. This Court has the general jurisdiction to hear this case pursuant to 28 U.S.C. §1491, and original jurisdiction, concurrent with the U.S. Court of Federal Claims, under 28 U.S.C. §1346(a)(1). This is a Civil Action against the United States for a refund of amounts withheld from Plaintiff and/or paid to the IRS against the possibility of a later-proven tax liability, which liability was later and timely disproved.
4. The underlying statutes and regulations that relate to the claim for the refunds and mandate the payment of money relevant to this case are 26 U.S.C. § 6401(b)(1) and (c) and 26 U.S.C. §6402(a) and their corresponding Implementing Regulations found at 26 CFR 301.6401-1 and 26 CFR 301.6402-1, -2 and -3. Suit is brought under the authority of 26 U.S.C. § 7422.
5. This Court also has general jurisdiction to hear this case pursuant to 18 US Code §876 (mail fraud and extortion), and 26 U.S.C. § 7214(a) (1) through (3) (Offenses by officers and employees of the IRS). This is a Civil Action against IRS employees Christine L Davis and Carl W Horn II for mail fraud and extortion.

6. The Court also has general jurisdiction to hear this case pursuant to 5 U.S.C. § 552 (Freedom of Information Act). This is a Civil Action against IRS employees Danny Kincaid and Jennifer Perez for willful violation of section 522 (a)(2), (a)(3)(A) and ((a)(3)(B). There is an audio recording and copy of fax transmission sheet which clearly demonstrates that they acted willfully and capriciously withheld information they were compelled by law to “promptly” (see (a)(3)(A)) release to Plaintiff.
7. Venue is properly within this court pursuant to 28 U.S.C. § 1491(a)(1), and this venue is appropriate, fair, and convenient to the Defendant.
8. Plaintiff has pursued and exhausted all Administrative Remedies known to him prior to the filing of this action in Court.

II. The Parties

9. Plaintiff Dean Edward Malone is a married man, currently living in the state of Kentucky, Social Security number <deleted>3698.
10. In referring to Defendant, Plaintiff includes the United States Department of the Treasury, which, upon information and belief, is a department, bureau and/or branch of the United States and at all times relevant, acting as an agent thereof; and the Internal Revenue Service (IRS), which, upon information and belief, is a bureau and an agent of the Department of the Treasury and a collection agency in the business of collecting federal income and other taxes for defendant United States and at all times acting as an agent thereof.
11. In referring to the Defendant, the Plaintiff also includes IRS employees Christine L Davis, Carl W Horn II, Danny Kincaid and the Jennifer Perez as the specific actors who have not only

violated the spirit and word of the Internal Revenue Code as written, but have also violated other statutes articulated in section 1 above, that make them personally accountable for malfeasance and misfeasance in the execution of their office.

III. Statement of Facts

12. Plaintiff filed a return 1040 for Tax Years 2014, 2016, 2017 and 2018 on the following dates:

The tax return for 2014 was filed March 18 2019 with the IRS at its Kansas City, MO campus via certified mail with signature confirmation; US Postal Service confirmation number 7018 0360 0001 9515 8606. The 2016 return was filed March 18, 2017 with the IRS at its Kansas City, MO campus via certified mail with signature confirmation; US Postal Service confirmation number 2315 0610 0000 1862 1684. The 2017 return was filed April 2, 2018 with the IRS at its Kansas City, MO campus via certified mail with signature confirmation; US Postal Service confirmation number 7015 0640 0000 0730 4379. The 2018 return was filed March 19, 2019 with the IRS at its Kansas City, MO campus via certified mail with signature confirmation; US Postal Service confirmation number 7017 2400 0000 5274 4364.

13. In 2018 an amended return for 2016 was sent by the Plaintiff because he had the mistaken notion that he should recover state and local taxes from the IRS. It was included in the envelope along with the 2017 return with the previously stated US Postal Service confirmation number 7015 0640 0000 0730 4379

14. In 2019, an amended return for 2016 and 2017 were sent to the IRS to correct the record on the Plaintiff's mistaken notion that the IRS is accountable for collecting state income taxes and included with them were sworn affidavits testifying that the returns are true and complete. The final 2016 amended return was filed March 19, 2019 with the IRS at its

Kansas City, MO campus via certified mail with signature confirmation; US Postal Service confirmation number is 7017 2400 0000 5274 4340. The final 2017 amended return was filed March 19, 2019 with the IRS at its Kansas City, MO campus via certified mail with signature confirmation; US Postal Service confirmation number is 7017 2400 0000 5274 4371.

15. A return for 2018 was filed March 19, 2019 with the IRS at its Kansas City, MO campus via certified mail with signature confirmation; US Postal Service confirmation number 7017 2400 0000 5274 4364, along with an affidavit attesting that the return is true and complete.
16. A genuine copy of the heretofore mentioned Returns with attachments and receipts proving delivery are attached hereto as Exhibit A.
17. Subsequent documentation from the IRS provides additional evidence that they received the Returns as hereto described as provided in Exhibits B, C and D.
18. In 2017, Plaintiff received a partial refund in the amount of \$10,354.87 against the claim of \$13,165.88 and the refund was deficient in the amount of \$2,811.01. The check was accompanied by letter CP12 titled Adjusted refund. The check and letter are attached as Exhibit B. This clearly demonstrates that the Defendant accepted the 2016 return as anything but frivolous, as subsequently offered by the Defendant and rigorously rejected by the Plaintiff with specific grounds at law.
19. The Returns show that Plaintiff had, in fact, no tax liability for the years 2014, 2016, 2017 and 2018.
20. The Returns show an overpayment of taxes.
21. To the extent that any taxes are shown on the Return as being owed, they have been paid.

22. Plaintiff has never received any § 6402(l) Notice of Disallowance of this claim by Defendant.
23. Plaintiff has never received a Notice of Deficiency for the Tax Years 2014, 2016, 2017 or 2018.
24. On information and belief, Defendant has not executed a § 6020(b) Return for Plaintiff for Tax Years 2014, 2016, 2017 or 2018.
25. Plaintiff has not seen any evidence that the Returns have been processed.
26. Plaintiff has received numerous letters from the IRS alleging Frivolous returns and has assessed a penalty of \$5000 for the 2016 return, despite the fact that letters were responded to in a timely manner and disputed said claims, demanding that they produce evidence of what characterizes said return as “frivolous” as defined specifically in IRS **Bulletin 2010-17** under notice 2010-33 and as required under 26 US 6702(c) and to provide evidence that the IRS has filed a § 6020(b) Return as required by statute. All correspondence related to IRS allegations of frivolous return are attached as Exhibit C.
27. Plaintiff has never received any refund or notice of credit from Defendant for the overpayment shown on the Return, other than what was presented in Exhibit B.
28. The IRS has deliberately frustrated Plaintiff’s attempts to obtain FOIA information on the TXMODA codes that accurately documents the IRS’s specific actions with respect to the Plaintiff for taxation years 2014, 2016, 2017 and 2018, specific to this claim; and Exhibit D provides evidence of same:
 - a. TXMODA and any other internal use transcripts showing “Control Base and History” information for MFT>55,

- b. any internal-use transcripts indicating that an IRS return has been prepared or executed by the Commissioner or other IRS Officers as proscribed by law.

29. Despite the fact that the Plaintiff's original FOIA requests were properly notarized, signed and stamped by a certified Notary Public, Jennifer Lopez frustrated the Plaintiff's attempts at obtaining FOIA information with a form letter indicating that Plaintiff had failed to provide proper identification, despite the fact that Plaintiff had properly filed said petition exactly as prescribed under 28 USC 1746. This is further evidence of the Defendant's attempts to frustrate Plaintiff's refund claims.

30. Defendant has deliberately frustrated the lawful refunding of Plaintiff's property with actions that are a violation of several statutes and their own procedural rules, as will be detailed in Claims for Relief.

31. Some of the documents presented in the exhibits have had the Plaintiff's social security number removed because they were published on the internet. Plaintiff affirms that these documents were indeed received by him and are true copies of the originals.

32. All the facts with respect to assertions about what the IRS has done to date are based on their own correspondence, my rebuttal letters, their subsequent correspondence, the Freedom of Information Act and Failed Discoveries Attempts disclosures attached as Exhibits B, C and D.

IV. Claims for Relief

A. Count One

33. Plaintiff incorporates and re-alleges the foregoing paragraphs as if fully set forth herein.

34. On information and belief, Defendant is in violation of the FIOA. IRS employees Danny Kincaid and the Jennifer Perez should be held personally accountable for willfully failing to provide specific information about Plaintiff as proscribed by FOIA sections 552 (a)(2)(D) and (E), despite their being informed by Plaintiff of the particular applicable laws. Danny Kincaid was presented in person on the afternoon of May 22, 2019 with a copy of these particulars, as included in Exhibit D. There is a voice recording of the entire proceedings between Plaintiff and Danny Kincaid to support the assertion that Kincaid acted willfully despite being fully informed of the consequences of failing to provide the requested information. Jennifer Perez as the person responsible for implementing FOIA requests on behalf of the IRS knew or should have known her responsibilities under the act. Plaintiff witnessed Kincaid faxing a copy of this document and Plaintiff's formal information requests to Jennifer Lopez who subsequently sent some, but not all, of the requested information to Plaintiff within the next month. Plaintiff's TXMODA information was denied yet again with the assertion that Treasury Regulation 26 CFR 601.702(d) grants an exclusion from FOIA processing requirements. A careful reading of this regulation and all the referenced external sections reveals that no such exclusion to providing TXMODA data is granted. In fact, FOIA very specifically grants that specific information of this nature is explicitly included as follows:

§ 552. (a) Each agency shall make available to the public information as follows:

...

(2) Each agency, in accordance with published rules, shall make available for public inspection in an electronic format

(D) copies of all records, regardless of format

(i) that have been released to any person under paragraph (3); and

(ii) (I) that because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; or

(II) that have been requested 3 or more times; and

~~(E)~~ a general index of the records referred to under subparagraph (D)

35. The above-mentioned paragraph (3) states:

(3)(A) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, and except as provided in subparagraph (E), each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

36. Defendant has clearly failed to follow the law as written in providing the Plaintiff's TXMODA codes and an index explaining their meaning, in an apparent attempt to hide their actions against Plaintiff. As the following precedent law shows, both Danny Kincaid and Jennifer Perez need to be held accountable for failing to meet their responsibilities under the law. If there is any doubt as to their willful neglect, Plaintiff has a full audio recording of the entire interaction. Consider this precedent:

The 'Government' is an abstraction, and its possession of property largely constructive. Actual possession and custody of Government property nearly always are in someone who is not himself the government but acts in its behalf and for its purposes. He may be

an officer, an agent or a contractor. His personal advantages from the relationship by way of salary, profit, or beneficial personal use of property may be taxed..." United States v, County of Allegheny, 322 US 174 (1944)

37. Clearly, this is settled law. Plaintiff demands that they be held accountable as an example to others that government employees must be held responsible for their fiduciary duties as privileged Americans.

B. Count Two

38. On information and belief, IRS employee Christine L Davis and Carl W Horn II have violated two statutes, 18 US Code 876, 26 US Code 7214, The Taxpayer Bill of Rights and are guilty of ignoring the Secretary's Notice 2010-33 describing when a penalty can be imposed. They knew or should have known their responsibilities under the law because Plaintiff informed them explicitly as the response letters in Exhibit C clearly indicate. Plaintiff demands that they be held accountable under the provisions of the laws for their willful actions which are the direct cause of the failure of Defendant to return Plaintiff's property.

C. Count Three

39. On information and belief, Defendant has failed to process the Returns.

40. Defendant has not refunded Plaintiff's overpayment shown on the Returns.

41. To date, for Tax Years 2014, 2016, 2017 and 2018, Defendant owes Plaintiff the amount of \$42,789.80 plus interest, as allowed by statute and the Internal Revenue Code.

V. Prayer for Relief

Wherefore, Plaintiff prays for judgment against the Defendant as follows:

- a. That the court by way of a panel of jurors render an indictment against Christine L Davis and Carl W Horn II for violating the above-named statutes.
- b. That the court by way of a panel of jurors render an indictment against IRS employees Danny Kincaid and the Jennifer Perez for violating the above-named statutes and take prescribed steps to discipline them.
- c. That this court by way of a panel of jurors, find for the Plaintiff in the amount of their refund claim of \$42,789.80 plus interest as allowed by law;
- d. Given Plaintiff's time, valued by the employment market at \$160,000 per annum and given that the research, expense and efforts leading up to and including the launch this complaint has consumed approximately 6 man-months of research, correspondence, travel and personal expenses, that this court by way of a panel of jurors find for the Plaintiff further punitive damages of \$80,000;
- e. Given that the media is entirely in the hands of the very people that are in control of the United States government by way of campaign contributions, corporate favors and etc. as is already common knowledge since most of the world's media are in the hands of just 5 corporations, and that this same media has consistently refused to bring to the public's attention this train of abuses; that this court by way of a panel of jurors award the Plaintiff a financial settlement to be used to establish a non-profit corporation that will assist other citizens engaged in similar controversies with the IRS and to spread the word of how to properly apply Federal Income Tax through alternate media.
- f. For such other and further relief as may be permitted by law and as this Court by way of jury may deem just and proper.

VI. Jury Trial Demanded

Plaintiff demands a trial by jury. The rationale for this demand is clear. The court officers, themselves privileged employees of the government, have a bias against the Plaintiff and therefore must not be the arbiters of a ruling. Furthermore, since the jury is in fact the judge and the bench magistrate is in fact the referee of the proceedings, any attempt by the said magistrate to suppress any evidence offered by the Plaintiff must result in automatic judgement in favor of the Plaintiff. The power of a jury is to rule not only on the innocence or guilt of a Defendant, but also on the lawfulness and proper interpretation of the statutes themselves. This is the very foundation of precedent law. As former Chief Justice John Jay said in in *Georgia v. Brailsford*, 3 U.S. 1 (1794), "It is presumed, that juries are the best judges of facts; it is, on the other hand, presumed that courts are the best judges of law. But still both objects are within your (i.e. jurors') power of decision... you (i.e. jurors) have a right to take it upon yourselves to judge of both, and to determine the law as well as the fact in controversy." He also stated in *Georgia v. Brailsford*, 3 U.S. 1 (1794), "The jury has a right to judge both the law as well as the fact in controversy." As the Constitution of Maryland states, "In the trial of all criminal cases, the Jury shall be the Judges of Law, as well as of fact, except that the Court may pass upon the sufficiency of the evidence to sustain a conviction." Any attempt by the court or its officers to suppress evidence of the Plaintiff amounts to violation of the spirit of this law. To that end, the final selected jury must be instructed on these points and the Plaintiff will ensure it is done.

Respectfully submitted this 20 day of November 2019.

Dean E Malone

Dean Edward Malone, Plaintiff pro se

Verification

I, Dean Edward Malone, am a Plaintiff in the above titled action. I have written and prepared the foregoing Complaint and know the contents thereof. The same is true of my own knowledge in substance and fact, except as to those matters which are herein alleged on information and belief; and as to those matters, I believe them to be true. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed at Knob Lick, KY.

DATED 20 day of November, 2019

Dean E Malone

Dean Edward Malone, Plaintiff pro se